

City of Happy Valley
Planning Commission Minutes
Tuesday, March 9, 2010

Commission Members Present:

Chair, Kenneth Koblitz
Vice Chair, Diane Morrow
Commissioner, Winston Kurth
Commissioner, Shanin Prusia
Commissioner, Walter Barnes
Commissioner, Janelle Brannan
Commissioner, Ted Hartzell

Staff Members Present:

Michael Walter, Interim Economic &
Community Development Director
Cheryl Whitehead, Planning Assistant
Heather Martin, City Attorney

Others Present:

(See attached sign-in sheet)

CALL TO ORDER

Chair Koblitz called the meeting to order at 7:00 p.m. Roll call was taken.

I. CITIZEN COMMENT

Ellen Thum
13152 SE Snowfire Dr
Happy Valley, OR 97086

Mrs. Thum made the following comments:

- Opposes home base businesses when construction vehicles are used
- Live on a quiet street where children play
- Has seen a significant increase in traffic
- Didn't think they would have to deal with this type of issue when they moved into the neighborhood
- It will set a bad precedence if the City relaxes standards for home businesses to allow in residential areas
- It gives the surrounding homes a disadvantage when selling
- This type of business belongs in a commercial building
- Them and six (6) other surrounding neighbors have signed a letter opposing this home business
- Unable to open their backdoor due to exhaust fumes and noise
- This is not fair to the surrounding residents
- Michael Walter requested a copy of the signed letter

Michael Walter, Interim Economic & Community Development Director stated that this issue will be addressed in the second public hearing. Commission can take the public's testimony now or wait.

Chair Koblitz requested that all testimony be heard now.

Zandy Butler
13115 SE Snowfire
Happy Valley, OR 97086

Mr. Butler made the following comments:

- Is a resident in the neighborhood with two (2) small children
- The street is a dead end where children play
- The increase in traffic is a danger to the children that may not pay as close attention to the traffic
- Concerned about the multiple vehicles coming in and out of the neighborhood
- This is not a business that belongs in a residential neighborhood

Don Wenlund
13092 SE Snowfire Dr
Happy Valley, OR 97086

Mr. Wenlund made the following comments:

- Takes exception to what has been said
- Has a total of six (6) vehicles
- None of the vehicles have moved since they moved into the neighborhood
- Does have one truck that comes to the business twice a week
- Stated was told that City staff said if they paid their \$100.00 fee it would be OK
- There is no such thing as a ½ ton or ¾ ton commercial truck they are rated in GPW
- By state law four (4) of the vehicles are 9600GPW rigs and two (2) are regular suburban's that residents have in their driveways
- Sold two (2) of the vehicles last week with one more to be sold
- They have not had a lot of traffic since they have not had a job in three months
- Has taken several pictures of businesses in the neighborhood that are equal to their home business
- Paid the \$100.00 and have been told that they may have to pay additional money to be in compliance
- The lady that spoke earlier asked us not to cut down the dead shrubbery so that they don't have to look at the rigs
- Have tried to follow all of the rules

II. OATH OF OFFICE

Michael Walter introduced Ted Hartzell, the new Planning Commissioner. The Oath of Office was signed.

III. CONSENT AGENDA ITEMS

1. Minutes dated February 9, 2010

Chair Koblitz made a motion to approve the Consent Agenda. Commissioner Barnes seconded the motion.

Commissioners all in favor. The Consent Agenda was passed.

IV. HOB-01-10 – ADULT FOSTER CARE

The applicant requests approval of a Class B home occupation permit to allow an adult foster care home for developmentally disabled persons to operate in a single-family residence. The care home will have the capacity to handle up to five residents and will be operated by the primary occupant of the residence. The applicant will require the services of one to three full-time employees, who will report to work at the home occupation. The subject residence will provide a total of four off-street parking spaces.

Chair Koblitz read the hearing script in to the record. He asked Commissioners for any Declarations of Exparte Contact, Bias or Conflict of Interest.

None Declared.

Chair Koblitz asked the audience if there are any challenges to any Councilors Exparte Contact, Bias or Conflict of Interest.

None Challenged.

Michael Walter, Interim Economic & Community Development Director, gave the following staff report:

- Handed out the missing pages of Exhibit 3
- Discussed page 6 referring to fencing around the property
- No public comments were received at the time of this report
- Discussed page 7 – 13 the findings of facts
- The applicant has provided a continuous fence run linking to the structure of the home
- Page 8 of the packet should state that the applicant is the principle occupant not the home owner

Public testimony opened at 7:22 p.m.

Wondwesen Tefera
15273 SE Francesca Lane
Happy Valley, OR 97086

Mr. Tefera made the following comments:

- Moved into the house on February 15, 2010
- Has a passion to help people
- Clackamas County has seen his work and encouraged him to open this business in the county
- Residents do not drive or leave on their own
- The residents are respectful to surrounding neighbors and are clean
- This is not a group home or half way house
- Respects the community's opinion
- Discussed this with the landlord prior to leasing the residence
- Does not have any clients as of now
- Surrounding neighbors assumed that he had started this business due to the amount of cars that were parked at the residence. The neighbor took a picture of the cars parked but they were family members visiting the residence
- Received a letter from the surrounding neighbors opposing this business

- There has been a lot of assumptions from the neighbors but no one has discussed the situation with him prior to the opposition
- Trying to do the right thing. Does not want to cause trouble

Commissioner Kurth asked if a state permit was necessary. Applicant stated that he received a state license at the beginning of March.

Pete Herder
15149 SE Francesca
Happy Valley, OR 97086

Mr. Herder made the following comments:

- As president of the HOA he opposes this business
- The CC&R's state that a home business is not allowed
- He is as a volunteer to serve the community
- It is important that as a community they express their opposition to this home based business

Chair Koblitz stated that the City cannot be governed by the neighborhood CC& R's. It would be a civil matter.

Commissioner Prusia asked why they opposed this. Mr. Herder stated that there is no emotional opposition but only an opposition that the CC&R's are in violation.

Daniel & Diana McCarty
15274 SE Francesca
Happy Valley, OR 97086

Mr. McCarty made the following comments:

- Lives directly across from the applicant
- Is very emotional regarding this issue
- They chose their house which had CC& R's expecting that they would be protected from situations like this
- To see a business go in across from him is upsetting
- Is concerned about the occupants and the increase in traffic
- There is some risk with developmentally challenged occupants
- He has young kids and this really bothers him
- Did not move into this neighborhood to have a business located in the area especially an adult foster care facility

Kari Burnside
15142 SE Holland Loop
Happy Valley, OR 97086

Ms. Burnside made the following comments:

- Is a part of the HOA board and shares the same concerns as the president
- The HOA takes this very serious to help keep the home values
- The residents are required to be single family and they have had to say no to roommates in the past
- This has nothing to do with the state of the occupants or the applicant

- In this neighborhood it is expected if you own or rent you are obligated to follow the rules of the HOA
- If this is approved it opens up other options for future businesses in the neighborhood
- The residents are really worked up over this issue

Brenda Brunnor
15175 SE Holland Loop
Happy Valley, OR 97086

Ms. Brunnor made the following comments:

- Is on the HOA board
- The HOA clearly states that no home businesses are allowed
- The HOA has enforced penalties and told residents no to home businesses in the past
- This is a clear violation of the HOA rules
- The HOA has communicated with the homeowner and the HOA attorney has sent letters to the applicant and the home owner
- The HOA will have to fine the owner for the violation
- It is possible that the applicant was unaware that this was a violation of the CC&R's
- If this is approved the HOA will continue to take this further in the legal process

Wondwesen Tefera
15273 SE Francesca Lane
Happy Valley, OR 97086

Mr. Tefera made the following comments:

- He has just met the homeowners tonight they have never come to his house to discuss this
- The property owner, Lisa Ephrem, ran a business out of this same house for over a year
- Ms. Ephrem signed the application and gave her blessing on this
- Is unsure how this will lower the home value
- When he moved in the neighbors stated that he was in violation with the parking but other neighbors park the same way
- The HOA can challenge him but in a different setting and he is ready to fight for this
- He is not in violation of anything
- He could find other businesses in the area but he does not want to challenge those businesses
- He is not here to fight with anyone he just wants to run his business
- This is not the right place for the residents to challenge this
- He has signed a one year lease

Commissioner Barnes asked if the applicant is willing to supply a continuous solid wood fence which was recommended by City staff prior to residents moving in. The applicant stated that he was willing to provide the fencing.

Chair Koblitz continued reading the hearing script into the record. Chair Koblitz asked the applicant if he would like to waive the seven (7) days allowed to include additional data to the Planning Commission.

The applicant does wish to waive the seven (7) days.

Public testimony closed at 8:02 p.m.

Discussion:

Commissioner Barnes asked if there was a way to change the City code so that there is not such a confusion between what the CC&R's enforce and what the City can enforce.

City attorney Heather Martin stated that the City must meet state statutes and would not be able to enforce the CC&R's. The CC&R's are private and not related to the state.

Commissioner Kurth made a motion to approve HOB-01-10. Commissioner Barnes seconded the motion.

Roll Call Vote: Ayes from Commissioners Koblitz, Kurth, Brannan, Prusia, Morrow Barnes and Hartzell. The motion was passed with a unanimous vote.

Michael Walter requested a short recess at 8:05 p.m.

The meeting continued at 8:13 p.m.

V. LDC-05-09 TEXT AMENDMENTS TO CITY CODE

The proposed administrative amendments represent City initiated amendments to a single Comprehensive Plan Policy (Policy 77); Title 3 (Revenue and Finance); Title 15 (Building and Construction); and Title 16 (Development Code). The proposed changes are presented either as corrections necessary due to past amendments, issues identified by staff, property owners, consultants and legal counsel.

Chair Koblitz read the hearing script in to the record. He asked Commissioners for any Declarations of Exparte Contact, Bias or Conflict of Interest.

None Declared.

Chair Koblitz asked the audience if there are any challenges to any Councilors Exparte Contact, Bias or Conflict of Interest.

None Challenged.

Michael Walter, Economic & Community Development Director, gave the following staff report:

- Materials were passed out to the Commission from Michael Robinson
- Discussed open space, density calculations and transfers
 - Currently the only way to do a density transfer is through a PUD process
 - Would like to have the ability to do a density transfer without going through a PUD process
 - Applicants would be required to go through an environmental review process for tracking purposes
 - Mr. Robinson suggested that the code be revised per the suggestions in his letter
 - The zoning will control density calculation and total density

Public testimony opened at 8:20 p.m.

Michael Robinson
Perkins Coy
1120 NW Couch St
Portland, OR 97209

Mr. Robinson made the following comments:

- Represents the Beal family
- Supports the density changes
- Worked on the language conceptually and is satisfied with it
- The letter presented today has three (3) minor changes that he request be made to the language
- If these changes are not made he is still comfortable with the language changes
- Suggest adding the word “and” at the top of page 57 to give the language more flexibility
- Recommend approval

Michael Walter made the following comments:

- Discussed the Misc. Permits section of the language changes
- Discussed the possibility of Adult Foster Care facilities be considered as a Class A permit which would not require that the application go to the Planning Commission

Commission liked the idea of having Adult Foster Care facilities as a Class A permit.

Commissioner Morrow asked what recourse would the opposition have if the applications did not come through the Planning Commission. Michael Walter stated that it would be considered a civil matter which the City would not be involved in.

Commissioner Barnes stated that seeing tonight how people need a place to be heard makes him concerned about taking that type of forum away.

Michael Walter stated that the City Manager and City Council are concerned that it could expose the City for legal defense.

Commissioner Prusia asked if the change were to take place would staff still place conditions of approval on the application. Michael Walter stated that yes the application could still be revoked.

Commissioner Kurth stated that sometimes staff is able to come up with verbiage that can make the application work. If it was a Class A it would not be appealable. He would be comfortable leaving the language as it currently is.

Michael Walter stated that a Class A can be appealed before the Planning Commission. If the exempt status were placed on Adult Foster Care facilities the City would lose the ability to enforce screening.

Michael Walter made the following comments regarding Misc. Permits 2d:

- This is a small but complex issue
- The testimony under Citizen Comment shows the difficulty of writing the code to deal with a variety of situations
- Does agree with Mr. Wenlund regarding the vehicle tonnage in which the code is written. The code does need to be changed regarding this issue

- There has been an increase in home occupations with commercial vehicles
- Showed example pictures to the commission of the Wenlund property and the Bieker property
- How should the language be written in regards to Class B permits with the number of vehicles
 - Should it be limited by the number of acreage, trips etc.
 - Discussed various options for limitations of commercial vehicles, parking, screening etc
 - Staff is looking for the line in the sand
- If the Home Occupation exceeds the limitations then it would become a code enforcement issue

Commission made the following comments:

- Leave the option open and review on a case by case basis
- Stipulate the total number of vehicles

Public testimony was reopened at 8:59

Barbara Wenlund
13092 SE Snowfire Dr
Happy Valley, OR 97086

Mrs. Wenlund made the following comments:

- Stated it was not fair to them having this neighbor submit a letter of their activities without their knowledge
- They have lived in the house since October with only one job
- Customers do not come to their home
- The three (3) large rigs have not been used except to move building materials
- There has been more activity with the rigs recently while they were for sale
- Two (2) of the rigs have been sold
- There has been no activity, their son only arrives when there is work available
- Stated that the neighbors backdoor is approximately 150 feet from where the rigs are located
- Does not understand where the neighbor is receiving her information

Chair Koblitz stated to Mrs. Wenlund that all testimony is equal in the record.

Don Wenlund
13092 SE Snowfire Dr
Happy Valley, OR 97086

Mr. Wenlund made the following comments:

- Is trying to keep his business going and does not need all of this aggravation
- All of the vehicles will be sold except for one van and one pickup truck
- They had a shop on Hwy 212 but lost the lease in 2008
- Currently they are trying to wind down the business but it takes time
- They have the ability to store the equipment in the shed located on the property

Public testimony closed at 9:09 p.m.

Discussion:

Michael asked the question; what would be the best option, screening, limiting the number of vehicles or full enclosure.

Commission made the following comments:

- Complaints come from traffic and noise so it might be more apt to limit the number of vehicles
- The City is trying to create a one size fits all solution
- Michael Walter stated the City may need to have two (2) codes, rural and residential
- Could add to the current code full enclosure and limit the number of vehicles to two (2)

Michael Walter stated to the audience that they are welcome to stay but that they will receive notification of the City Council meeting for further discussion.

Michael Walter continued with the following comments:

- Discussed pages 27, 39, 53, 54, 56, 57, 60 of the Planning Commission packet

Commissioner Kurth is concerned how the HOA's seem to think that the CC&R's have authority in regard to the City Code. Is there some way to notify the applicants regarding their CC&R obligations prior to the application process?

Michael Walter stated that the City could have Edit Foteff, Community Liaison, review this process.

Michael Walter stated that he is comfortable with the first two (2) suggestions from Michael Robinson but that the last suggestion was not necessary.

After much discussion the Commission decided that the word "and" would be added after provisions #3 through #7 on page 57 of the Planning Packet.

Chair Koblitz made a motion to approve HOB-01-10. Commissioner Kurth seconded the motion.

Roll Call Vote: Ayes from Commissioners Koblitz, Kurth, Brannan, Prusia, Morrow, Barnes and Hartzell. The motion was passed with a unanimous vote.

VI. COMMISSIONERS CONCERNS AND COMMENT

The Following comments were made:

- Discussed the amount of time allowed for public testimony – Commissioner's felt it was appropriate
- Staff will only condition for signs with Class B Home Occupation permits if the applicant requests a sign with the application

VII. ADJOURNMENT

Commissioner Barnes made a motion to adjourn the meeting. Chair Koblitz seconded the motion.

Roll Call Vote: Ayes from Commissioners Koblitz, Kurth, Brannan, Prusia, Morrow, Barnes and Hartzell. The motion was passed with a unanimous vote.

The meeting was adjourned at 9:43 p.m.

Prepared and submitted by:

Cheryl Whitehead
Planning Assistant

These minutes were approved at the April 13, 2010 Planning Commission Meeting.